

114TH CONGRESS  
2D SESSION

# S. 2894

To amend the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to provide for salary reductions for certain employees of a pension plan in critical or declining status that reduces participant benefits, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2016

Ms. STABENOW (for herself, Mr. BROWN, Mr. PETERS, Mrs. McCASKILL, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to provide for salary reductions for certain employees of a pension plan in critical or declining status that reduces participant benefits, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Pension Fund Integ-  
5       rity Act of 2016”.

## 1 SEC. 2. EXECUTIVE SALARIES.

2 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF

3 1986.—

4 (1) IN GENERAL.—Subparagraph (C) of section  
5 432(e)(9) of the Internal Revenue Code of 1986 is  
6 amended by adding at the end the following new  
7 clause:8 “(iii) In the case of a systemically im-  
9 portant plan (as defined in subparagraph  
10 (H)(v)(III)), effective on the date the ben-  
11 efit suspension goes into effect, the annual  
12 compensation of each employee of the plan  
13 is reduced to the lesser of—14 “(I) the annual compensation of  
15 the employee for the plan year in  
16 which the benefit suspension is ap-  
17 proved under subparagraph (G) (de-  
18 termined as of the date of such ap-  
19 proval), reduced by the reduction per-  
20 centage of so much of such annual  
21 compensation as exceeds \$100,000, or22 “(II) the average annual com-  
23 pensation of the employee for the 3  
24 plan years immediately preceding the  
25 year in which the benefit suspension is  
26 approved under subparagraph (G), re-

1                         duced by the reduction percentage of  
2                          so much of such average annual com-  
3                          pensation as exceeds \$100,000,  
4                          and will not be increased (including by  
5                          means of a bonus, performance-based com-  
6                          pensation, or otherwise) as long as the  
7                          benefit suspension remains in effect. For  
8                          purposes of the preceding sentence, the  
9                          term ‘reduction percentage’ means the per-  
10                         centage determined by the Secretary and  
11                         provided to the plan which is equal to the  
12                         average percentage reduction in benefits  
13                         applicable to the 50 participants and bene-  
14                         ficiaries who receive the greatest reduction  
15                         in benefits under the plan as a result of  
16                         the suspension.”.

17                         (2) TAX ON PROHIBITED TRANSACTIONS.—

18                         (A) IN GENERAL.—Paragraph (1) of sec-  
19                         tion 4975(c) of such Code is amended—  
20                         (i) by striking “or” at the end of sub-  
21                         paragraph (E),  
22                         (ii) by striking the period at the end  
23                         of subparagraph (F) and inserting “; or”,  
24                         and

(iii) by adding at the end the following new subparagraph:

“(G) notwithstanding subsection (d)(2),  
payment by a systemically important plan (as  
defined in section 432(e)(9)(H)(v)(III)) of—

“(i) any compensation (including a bonus or performance-based compensation) in excess of the amount determined under section 432(e)(9)(C)(iii) to any employee of the plan with respect to which a benefit suspension is in effect under section 432(e)(9), or

“(ii) in the case of any nonemployee who was an employee of the plan during any of the 3 plan years immediately preceding the year in which the benefit suspension is approved under section 432(e)(9)(G), any compensation to such individual (as an independent contractor or otherwise and including any bonus or performance-based compensation) in excess of the amount that would be determined under section 432(e)(9)(C)(iii) if the individual were an employee at the time of payment of such compensation.”.

(D) CLERICAL AMENDMENTS.—The headings of subsections (a) and (b) of section 4975 of such Code are each amended by striking “ON DISQUALIFIED PERSON”.

17       (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
18 COME SECURITY ACT OF 1974.—

(H)(v)(III)), effective on the date the benefit suspension goes into effect, the annual compensation of each employee of the plan is reduced to the lesser of—

“(I) the annual compensation of the employee for the plan year in which the benefit suspension is approved under subparagraph (G) (determined as of the date of such approval), reduced by the reduction percentage of so much of such annual compensation as exceeds \$100,000, or

“(II) the average annual compensation of the employee for the 3 plan years immediately preceding the year in which the benefit suspension is approved under subparagraph (G), reduced by the reduction percentage of so much of such average annual compensation as exceeds \$100,000.

and will not be increased (including by means of a bonus, performance-based compensation, or otherwise) as long as the benefit suspension remains in effect. For purposes of the preceding sentence, the

1           term ‘reduction percentage’ means the per-  
2           centage determined by the Secretary of the  
3           Treasury and provided to the plan which is  
4           equal to the average percentage reduction  
5           in benefits applicable to the 50 partici-  
6           pants and beneficiaries who receive the  
7           greatest reduction in benefits under the  
8           plan as a result of the suspension.”.

9           (2) PROHIBITED TRANSACTIONS.—Paragraph

10          (1) of section 406(a) of such Act (29 U.S.C.  
11          1106(a)(1)) is amended—

12           (A) by striking “or” at the end of subpara-  
13           graph (D),

14           (B) by striking the period at the end of  
15           subparagraph (E) and inserting “; or”, and

16           (C) by adding at the end the following new  
17           subparagraph:

18               “(F) notwithstanding section 408(b)(2),  
19               payment by a systemically important plan (as  
20               defined in section 305(e)(9)(H)(v)(III)) of—

21                   “(i) any compensation (including a  
22                   bonus or performance-based compensation)  
23                   in excess of the amount determined under  
24                   section 305(e)(9)(C)(iii) to any employee  
25                   of the plan with respect to which a benefit

1 suspension is in effect under section  
2 305(e)(9), or

3 “(ii) in the case of any nonemployee  
4 who was an employee of the plan during  
5 any of the 3 plan years immediately pre-  
6 ceding the year in which the benefit sus-  
7 pension is approved under section  
8 305(e)(9)(G), any compensation to such  
9 individual (as an independent contractor or  
10 otherwise and including any bonus or per-  
11 formance-based compensation) in excess of  
12 the amount that would be determined  
13 under section 305(e)(9)(C)(iii) if the indi-  
14 vidual were an employee at the time of  
15 payment of such compensation.”.

16 (c) EFFECTIVE DATES.—

17 (1) IN GENERAL.—The amendments made by  
18 subsections (a)(1) and (b)(1) shall apply to suspen-  
19 sions of benefits under section 432(e)(9)(G) of the  
20 Internal Revenue Code of 1986 and section  
21 305(e)(9)(G) of the Employee Retirement Income  
22 Security Act of 1974 (29 U.S.C. 1085(e)(9)(G))  
23 which take effect after the date of the enactment of  
24 this Act.

1                             (2) PROHIBITED TRANSACTIONS.—The amend-  
2         ments made by subsections (a)(2), (b)(2), and (b)(3)  
3         shall apply to any transaction made after the date  
4         of the enactment of this Act.

5     **SEC. 3. PROHIBITION OF LOBBYING EXPENSES.**

6                             (a) AMENDMENTS TO INTERNAL REVENUE CODE OF  
7     1986.—

8                             (1) IN GENERAL.—Paragraph (1) of section  
9     4975(c) of the Internal Revenue Code of 1986, as  
10    amended by section 1(a), is amended—

11                             (A) by striking “or” at the end of subpara-  
12    graph (F),

13                             (B) by striking the period at the end of  
14    subparagraph (G) and inserting “; or”, and

15                             (C) by adding at the end the following new  
16    subparagraph:

17                             “(H) payment by the plan of any amount  
18    for the engagement of any person other than an  
19    employee of the plan in connection with any ac-  
20    tivity described in section 162(e)(1) during any  
21    period in which the plan is in endangered status  
22    under section 432(b)(1), in critical status under  
23    section 432(b)(2), or in critical and declining  
24    status under section 432(b)(6).”.

1                             (2) LIABILITY OF PLAN SPONSOR.—Subsections  
2                             (a) and (b) of section 4975 of such Code, as amend-  
3                             ed by section 1(a), are each amended by striking  
4                             “subsection (c)(1)(G)” and inserting “ subparagraph  
5                             (G) or (H) of subsection (c)(1)”.  
6                             (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-

7                             COME SECURITY ACT OF 1974.—

8                             (1) IN GENERAL.—Paragraph (1) of section  
9                             406(a) of the Employee Retirement Income Security  
10                             Act of 1974 (29 U.S.C. 1106(a)(1)), as amended by  
11                             section 1(b), is amended—

12                                 (A) by striking “or” at the end of subpara-  
13                             graph (E),

14                                 (B) by striking the period at the end of  
15                             subparagraph (F) and inserting “; or”, and

16                                 (C) by adding at the end the following new  
17                             subparagraph:

18                                 “(G) payment by the plan of any amount  
19                             for the engagement of any person other than an  
20                             employee of the plan in connection with any ac-  
21                             tivity described in section 162(e)(1) of the In-  
22                             ternal Revenue Code of 1986 during any period  
23                             in which the plan is in endangered status under  
24                             section 305(b)(1), in critical status under sec-

1           tion 305(b)(2), or in critical and declining sta-  
2           tus under section 305(b)(6).”.

3           (2) LIABILITY OF PLAN SPONSOR.—Subsection  
4           (c) of section 409 of such Act (29 U.S.C. 1109(c)),  
5           as added by section 1(b), is amended by striking  
6           “4975(c)(1)(G)” and inserting “subparagraph (G)  
7           or (H) of section 4975(c)(1)”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to transactions made after the date  
10          of the enactment of this Act.

